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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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APR 23 1971



Dear Senator Brooke:

This is in response to your referral dated March 4, 1971, with enclosure, requesting our findings and views concerning a comment from Mr. Ronald Cohen of Cambridge, Massachusetts. On the basis of an article published in The New Republic, Mr. Cohen urged you to do everything in your power to see that the General Accounting Office fulfills its responsibilities concerning the Lockheed Aircraft Corporation and the contract it has with the Air Force to produce C-5A aircraft.

The article stated that the General Accounting Office had acquiesced to a plan proposed by the Department of Defense to absolve Lockheed of much of its contractual liability for cost overruns on the C-5A aircraft and other procurements. The article also indicated that the Department of Defense contemplated the use of Public Law 85-804 which provides authority to enter into contracts or to make amendments without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts whenever such action would facilitate the national defense. The article questioned the use of this law for Lockheed and stated that the legislative history of Public Law 85-804 indicated that it had been written to aid small defense contractors.

The article also implied that the investigative efforts of the General Accounting Office were being directed and controlled either by the Department of Defense or by the Chairmen of the Committees on Armed Services and Appropriations. Consequently, the Office was not fulfilling its responsibility of remaining independent of the executive departments and investigating all matters relating to the receipt, disbursement, and application of public funds.

Concerning the question of whether Public Law 85-804 is the proper vehicle for resolving Lockheed's problems on the C-5A aircraft contract with the Air Force, we have reviewed the legislative history of Public Law 85-804 and have concluded that the proposed action is not precluded by the law and is within the intent of the legislative history.

The floor debates of the law seem to answer in the negative the question of whether the act should be limited to small claims. During

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these debates it was brought out that the law would be applicable to contracts for aircraft, missile construction, rockets, and ship-building. Procurements of this nature generally are not within the production capabilities of small business concerns. For additional information on the applicability of Public Law 85-804, see page 10 of the enclosed report on the financial capability of Lockheed to produce C-5A aircraft.

With respect to the efforts of the General Accounting Office, the breadth and depth of our Government-wide audit interest and responsibility in relation to our resources requires the most efficient utilization of available staff both in assignments undertaken and in the conduct of those assignments. Our basic audit policy, except as otherwise required by statute, external request, or other factors beyond our control, is to direct available resources and talents to the areas in which they can be most effectively used to fulfill the greatest apparent need and to achieve the greatest benefit to the Government.

In all cases, our work must be sufficiently intensive to ensure the validity and usefulness of our findings and must be sufficiently extensive to fully support our opinions, conclusions, and recommendations.

Specific factors considered in reaching decisions on the nature, direction, and intensity of audit effort include: specific statutory requirements for audits; congressional requests; expressions or indications of congressional interest; potential adverse findings of significance; and importance of programs or activities, judged by such measures as size of expenditures, investment in assets, amount of revenues, and other special factors.

The weight to be given these kinds of factors varies from agency to agency and from program to program. Decisions in each case represent a composite judgment of all pertinent factors, the overriding factor being constructive contribution to improved management of Government operations.

Concerning the limitations on our review of the financial information which Lockheed furnished to the Department of Defense, we believe that considering all factors, the acceptance of the limitations in this particular case did not adversely affect the performance of our work. We previously had been requested to determine the financial capability of Lockheed to manufacture and deliver C-5A aircraft. To perform such a study, we needed access to financial information concerning Lockheed's Government and commercial (non-Government) programs and to other data related to the financial structure of the corporation.

Generally, pursuant to 10 U.S.C. 2313(b), the General Accounting Office is entitled to examine any books, documents, papers, or records

that directly pertain to, and involve transactions relating to, contracts negotiated with the Government. We, however, do not have the right to require a contractor to furnish us with data on its commercial programs or its overall financial condition.

We requested officials of the Department of Defense to make available for our review information the Department had relating to Lockheed's financial condition, including information on Lockheed's commercial programs. We were informed that, although the Department did have certain financial information pertaining to Lockheed, the information could not be made available to us since it had been furnished to the Department in confidence and on the basis that it would not be made public. While under 31 U.S.C. 54 the General Accounting Office has a right of access to any records of any Government department, as a practical matter, there is no sanction available to compel enforcement of our right.

To avoid a time-consuming exchange of correspondence regarding our right of access to information in the hands of the Department of Defense, we inquired of Department officials whether we could review the information at the Department if we refrained from copying or reporting it. We agreed that we would furnish to those requesting our review only our opinion as to whether Lockheed had the financial capability to complete and deliver C-5A aircraft.

Initially Defense officials declined our suggested approach; however, during subsequent discussions they agreed to permit us to review, under the above-stipulated conditions, the financial information which Lockheed had furnished to the Department.

The enclosed copy of the report is the result of the above review. See page 19 for more information on the scope of our review.

We are returning the enclosure to your referral as you requested.

Sincerely yours,



Comptroller General
of the United States

Enclosures

The Honorable Edward W. Brooke
United States Senate